

REMARKS

Claims 1-24 are pending in the application with claims 1, 12, 15, and 21 being the independent claims. Claims 1, 12, and 15 are amended. In view of the foregoing amendments and the remarks that follow, Applicant respectfully requests reconsideration.

Allowed Claims

Applicants acknowledge the allowance of claim 21-24.

Examiner Interview

Applicant and the undersigned thank Examiner Reimers for taking the time to discuss the claims of the application in an Examiner Interview on December 12, 2006. In that interview, the claims and the limitations of “directly in an axial direction” were discussed as they relate to U.S. Patent No. 5,702,453 to Rabbe et al.

Independent Claim 1

The Office Action rejected claims 1-8 and 12-20 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,702,453 to Rabbe et al.

Claim 1 is amended to recite “the tubular body and the side walls of the pair of cleat assemblies being free of interfacing threads.” This amendment does not add new matter.

Amendments to the claims fully comply the written description requirement if the description section and the drawings “clearly allow persons of ordinary skill in the art to recognize that [the inventor] invented what is claimed.” MPEP 2163.02. Here, the specification, drawings, and originally filed claims allow persons of ordinary skill in the art to recognize that the inventor invented an implant that includes a tubular body and cleats “free of interfacing threads” as recited in claim 1, thereby complying with the written description requirement. For example, Figure 2 of the application shows one embodiment of the tubular body and the side walls of the cleat assemblies being free of interfacing threads, and the interior side wall of one embodiment of the cleat assemblies is disclosed as being “smooth.” Paragraph 16. Further, the

cleat assemblies and tubular body are configured to “promote the slidable passage” of one relative to the other (paragraph 16), which in one embodiment is accomplished by an impactor that rotationally positions the cleat while a mallet is used to embed the spikes (paragraph 26). This too evidences that the tubular body and cleat assemblies are “free of interfacing threads,” as recited in claim 1. In addition, the tubular body is described as “a mesh or ‘cage’”, implying a lack of interfacing threads. For at least these reasons, Applicant submits that persons of ordinary skill in the art would recognize that the claimed implant is fully supported by the application.

Claim 1 is directed to a vertebral implant for interposition between two vertebral endplates. The implant includes a tubular body, a pair of ring-shaped cleat assemblies having a side wall which defines a hollow bore,

wherein each hollow bore is sized to fit over an end of the tubular body and is configured to slidably pass from the end along at least a portion of the length of the tubular body directly in an axial direction, the tubular body and the side walls of the pair of cleat assemblies being free of interfacing threads.

Rabbe does not disclose all the features of claim 1. For example, the device disclosed in Rabbe is not a vertebral implant with a “tubular body and the side walls of the pair of cleat assemblies being free of interfacing threads,” as required by independent claim 1. Instead, Rabbe discloses a vertebral body replacement having a threaded cylindrical body (21) and threaded endplates (22) (column 5, lines 52-54), that are configured to engage each other (column 6, lines 7-12; column 7, lines 41-43). Because Rabbe does not disclose a vertebral implant with all the features of claim 1, claim 1 should be allowable over Rabbe. Applicant respectfully requests that the Examiner withdraw the rejection and allow claim 1.

Independent Claim 12

Claim 12 is amended to recite a “biologic strut and the sidewall of the pair of cleat assemblies being free of interfacing threads.” Rabbe does not disclose this feature. Therefore, claim 12 should be allowable over Rabbe.

Independent Claim 15

Claim 15 is amended to recite a “tubular body and the first and second side walls of the first and second cleat assemblies being free of interfacing threads.” Again, Rabbe does not disclose this feature. Therefore, claim 15 should be allowable over Rabbe.

Dependent Claims

Claims 2-11, claims 13 and 14, and claims 13-20 respectively depend from claim 1, claim 12, and claim 15, and also are believed to be distinct from the art of record, for example for the same reasons discussed above with respect to the claims 1, 12, and 15, respectively.

Conclusion

For at least the reasons set forth above, Applicant respectfully requests that the Examiner reconsider and issue a formal notice of allowance.

Please grant any extension of time required to enter this response and charge any additional fees required by this paper to our Deposit Account No. 08-1394.

Respectfully submitted,

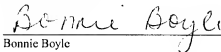


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